

REPRESENTATIVES FOR PETITIONER: David C. VanGilder, Attorney  
REPRESENTATIVES FOR RESPONDENT: Kim Miller, County Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

In the matter of:

ACRES, INC.,	)	Petitions for Review of Exemption,
	)	Form 132
Petitioner,	)	
	)	Petition Nos.: see below
v.	)	
	)	County: Noble
	)	
NOBLE COUNTY PROPERTY	)	Township: Wayne
TAX ASSESSMENT BOARD	)	
OF APPEALS,	)	Parcel Nos.: see below
	)	
Respondent.	)	Assessment Year: 2002

Petition Nos.:	Parcel Nos.:
57-003-02-2-8-10000	003-00013-00
57-003-02-2-8-10001	003-00012-00
57-003-02-2-8-10002	003-00018-00
57-003-02-2-8-10003	003-00270-01
57-003-02-2-8-10004	003-00020-00
57-003-02-2-8-10005	003-00423-00
57-003-02-2-8-10006	003-00424-00
57-003-02-2-8-10007	003-00941-00
57-003-02-2-8-10008	003-01327-00
57-003-02-2-8-10009	003-01328-00
57-003-02-2-8-10010	003-01326-00

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Appeal from the Final Determination of the  
Noble County Property Tax Assessment Board of Appeals

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**January 14, 2004**

## **FINAL DETERMINATION**

The Indiana Board of Tax Review (Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

### **Findings of Fact and Conclusions of Law**

#### **Issue**

1. The issue presented for consideration by the Board was:  
*Whether the real property owned by Acres, Inc. qualifies for 100% property tax exemption pursuant to Ind. Code § 6-1.1-10-16, § 6-1.1-10-33 and § 6-1.1-10-36.3 under the classification of educational, scientific or charitable purpose.*

#### **Procedural History**

2. Pursuant to Ind. Code § 6-1.1-15-3, David C. VanGilder, Attorney, filed Form 132, Petitions for Review of Exemption, on behalf of Acres, Inc. (Petitioner) petitioning the Board to conduct an administrative review of the above petitions. The Form 132 petitions were filed on December 20, 2002. The Noble County Property Tax Assessment Board of Appeals (PTABOA) issued the final determinations (Form 120) on November 22, 2002. The PTABOA determined the property to be 4% exempt and 96% taxable.

#### **Hearing Facts and Other Matters of Record**

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was conducted on October 22, 2003 in Albion, Indiana before Dalene McMillen, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2 and 6-1.5-3-3.
4. The following persons were present at the hearing:

For the Petitioner:

Carolyn McNagny, Executive Director, Acres, Inc.

Theodore H. Heemstra, Vice President, Acres, Inc.

David C. VanGilder, Attorney for the Petitioner

For the Respondent:

Kim Miller, Noble County Assessor

Delbert Linn, PTABOA Member

5. The following persons were sworn in as witnesses and presented testimony:

For the Petitioner:

Carolyn McNagny

Theodore Heemstra

For the Respondent:

Kim Miller

Delbert Linn

6. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit 1 – A copy of the parcels owned by Acres, Inc. in Noble County by Townships.

Petitioner's Exhibit 2 – Articles of Dedication of the Edna W. Spurgeon Nature Preserve, dated June 28, 1971.

Petitioner's Exhibit 3 – Article of Dedication for the Hammer Wetlands Nature Preserve, dated December 11, 1990.

Petitioner's Exhibit 4 – Amendment of Master Plan for Art Hammer Wetlands Nature Preserve.

Petitioner's Exhibit 5 – Master Plan for Lonidaw Nature Preserve, dated May 25, 1982.

Petitioner's Exhibit 6 – Articles of Dedication for the Lloyd W. Bender Memorial Forest Nature Preserve, dated December 21, 1972.

Petitioner's Exhibit 7 – Restated Articles of Incorporation of Acres, Inc., dated August 1, 1993 and Restated Bylaws of Acres, Inc.

Petitioner's Exhibit 8 – A brochure on the Acres, Inc. Nature Preserves.

Petitioner's Exhibit 9 – A copy of the Acres Quarterly for autumn, 2003.

Petitioner's Exhibit 10 – A copy of the Indiana Code chapter 5, section 14-4-5-1 through 14-5-5-12 on Nature Preserves.

Petitioner's Exhibit 11 – A copy of the Notice of Action on Review of Application for Exemption (Form 123) by the State Board of Tax Commissioners, dated October 14, 1980.

For the Respondent:

None

7. The following additional items are officially recognized as part of the record of proceedings:

Board's Exhibit A – Form 132 petitions dated December 20, 2002 with the following attachments: a copy of the Notice of Action on Exemption Application (Form 120) dated November 22, 2002; a copy of the Application for Property Tax Exemption (Form 136) dated May 15, 2002; a copy of the Wayne Township Preserves on appeal; the Petitioner's brief in support of the exemption; an attachment to Form 990 for Acres, Inc.; a brochure on Acres; Articles of Amendment for Acres issued by the Indiana Secretary of State dated January 22, 1997; a copy of the Acres Quarterly, Autumn 2002; and a copy of minutes of the Noble County PTABOA with attachments for October 23, 2002.

Board Exhibit B – Notice of Hearing on Petition (Form 117) dated August 22, 2003.

Board Exhibit C – A copy of the Additional Articles of Dedication for Art Hammer Wetlands Nature Preserve dated June 20, 1997.

Board Exhibit D – A letter from the Board to Acres, Inc. and David VanGilder, dated November 6, 2003.

8. The parties to the appeal agreed to waive the discovery provisions listed in Ind. Code § 6-1.1-15-4, which requires them to file statements of testimonial evidence and lists of witnesses and exhibits prior to the Board's hearing.
9. Acres, Inc. is an Indiana not-for-profit organization that owns and manages land in Noble and other counties. The land is owned pursuant to a § 501(c)(3) land trust.
10. There are a total of 16 appeal petitions filed by the Petitioner. A single hearing was held covering all petitions. The evidence, exhibits, and testimony are applicable to all petitions. The Board will address the petitions by township.
11. The subject property consists of eleven parcels of land located in Elkhart Township, Noble County, Indiana. The Edna W. Spurgeon Woodland Reserve consists of two parcels:

Petition No.	Parcel No.
57-003-02-2-8-10007	003-00941-00
57-003-02-2-8-10010	003-01326-00

The Art Hammer Wetlands Nature Preserve consists of nine parcels:

Petition No.	Parcel No.
57-003-02-2-8-10000	003-00013-00
57-003-02-2-8-10001	003-00012-00
57-003-02-2-8-10002	003-00018-00
57-003-02-2-8-10003	003-00270-00
57-003-02-2-8-10004	003-00020-00
57-003-02-2-8-10005	003-00423-00
57-003-02-2-8-10006	003-00424-00
57-003-02-2-8-10008	003-00786-00
57-003-02-2-8-10009	003-01328-00

12. On November 6, 2003, the Board telephonically requested from the Noble County Assessor's office a copy of the Additional Articles of Dedication for Art Hammer Wetlands Nature Preserves. By fax on November 6, 2003, Sara Weeks from the County Assessor's office submitted the Additional Articles of Dedication for Art Hammer

Wetlands Nature Preserves, recorded June 20, 1997. The document faxed by Sara Weeks has been entered into the record and labeled Board's Exhibit C.

13. By letter dated November 6, 2003, the Board provided a copy of the document faxed by Sara Weeks (as stated in Finding #12) to Acres, Inc. and David VanGilder. The Board's letter to the Petitioner has been entered into the record and labeled as Board's Exhibit D.

### **Jurisdictional Framework**

14. The Board is authorized to issue this final determination pursuant to Ind. Code § 6-1.1-15-3.

### **State Review and Petitioner's Burden**

15. The State does not undertake to make the case for the petitioner. The State decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113 (Ind. Tax 1998).
16. The petitioner must submit 'probative evidence' that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113 (Ind. Tax 1998), and *Herb v. State Board of Tax Commissioners*, 656 N.E.2d 890 (Ind. Tax 1995). ['Probative evidence' is evidence that serves to prove or disprove a fact].
17. The petitioner has a burden to present more than just 'de minimis' evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Board of Tax Commissioners*, 715 N.E.2d 1018 (Ind. Tax 1999). ['De minimis' means only a minimal amount].
18. The petitioner must sufficiently explain the connection between the evidence and petitioner's assertions in order for it to be considered material to the facts. 'Conclusory

statements' are of no value to the State in its evaluation of the evidence. See *Heart City Chrysler v. State Board of Tax Commissioners*, 714 N.E.2d 329 (Ind. Tax 1999).

['Conclusory statements' are statements, allegations, or assertions that are unsupported by any detailed factual evidence].

19. The State will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a 'prima facie case.' See *Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 689 N.E.2d 765 (Ind. Tax 1997). [A 'prima facie case' is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the State (as the fact-finder) to conclude that the petitioner's position is correct. The petitioner has proven his position by a 'preponderance of the evidence' when the petitioner's evidence is sufficiently persuasive to convince the State that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner's position].

### **Constitutional and Statutory Basis for Exemption**

20. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. Article 10, § 1 of the Constitution of Indiana.
21. Article 10, § 1 of the Constitution is not self-enacting. The Indiana General Assembly must enact legislation granting exemption.
22. In Indiana, use of property by a nonprofit entity does not establish any inherent right to exemptions. The grant of federal or state income tax exemption does not entitle a taxpayer to property tax exemption because income tax exemption does not depend so much on how the property is used, but on how the money is spent. *Raintree Friends Housing, Inc. v. Indiana Department of Revenue*, 667 N.E.2d 810 (Ind. Tax 1996) (501(c)(3) status does not entitle a taxpayer to tax exemption). For property tax

exemption, the property must be predominantly used or occupied for the exempt purpose. Ind. Code § 6-1.1-10-36.3.

### **Basis of Exemption and Burden**

23. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
24. All property receives protection, security, and services from the government, e.g., fire and police protection and public schools. This security, protection, and other services always carry with them a corresponding obligation of pecuniary support – taxation. When property is exempted from taxation, the effect is to shift the amount of taxes it would have paid to other parcels that are not exempt. *National Association of Miniature Enthusiasts v. State Board of Tax Commissioners (NAME)*, 671 N.E.2d 218 (Ind. Tax 1996). Non-exempt property picks up a portion of taxes that the exempt property would otherwise have paid, and this should never be seen as an inconsequential shift.
25. This is why worthwhile activities or noble purpose is not enough for tax exemption. Exemption is justified and upheld on the basis of the accomplishment of a public purpose. *NAME*, 671 N.E.2d at 220 (citing *Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E.2d 850, 854 (Ind. Tax 1990)).
26. The taxpayer seeking exemption bears the burden of proving that the property is entitled to the exemption by showing that the property falls specifically within the statute under which the exemption is being claimed. *Monarch Steel*, 611 N.E.2d at 714; *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E.2d 936, 938 (Ind. Tax 1987).
27. As a condition precedent to being granted an exemption under the statute (Ind. Code § 6-1.1-10-16), the taxpayer must demonstrate that it provides “a present benefit to the general public...sufficient to justify the loss of tax revenue.” *NAME*, 671 N.E.2d at 221

(quoting *St. Mary's Medical Center of Evansville, Inc. v. State Board of Tax Commissioners*, 534 N.E.2d 277, 279 (Ind. Tax 1989), *aff'd* 571 N.E.2d (Ind. Tax 1991)).

### **Discussion of Issue**

*Whether the real property owned by Acres, Inc. qualifies for 100% property tax exemption pursuant to Ind. Code § 6-1.1-10-16, § 6-1.1-10-33 and § 6-1.1-10-36.3 under the classification of educational, scientific or charitable purpose.*

28. The Petitioner contends the real property should be 100% exempt from property taxation.
29. The Respondent contends that the subject property located in Elkhart Township should be 4% exempt and be 96% taxable.
30. The applicable rules governing this issue are:

**Ind. Code § 6-1.1-10-16**

All or part of a building is exempt from property taxation if it is owned, occupied, and used by a person for educational, literary, scientific, religious or charitable purposes.

**Ind. Code § 6-1.1-10-33**

- (a) Tangible property, which is under the control of an executor or a trustee, is exempt from property taxation if it is to be used and applied:
  - (1) within this state for a municipal, educational, literary, scientific, religious, or charitable purposes: or
  - (2) for the benefit of this state or a state institution.
- (b) Subsection (a) does not apply unless the executor or trustee diligently and in good faith carries out the provisions of the will or trust agreement by using and applying the property for the intended purpose.

**Ind. Code § 6-1.1-10-36.3**

- (a) For purposes of this section, property is predominantly used or occupied for one (1) or more stated purposes if it is used or occupied for one (1) or more of those purposes during more than fifty percent (50%) of the time that it is used or occupied in the year that ends on the assessment date of the property.
- (b) If a section of this chapter states one (1) or more purposes for which property must be used or occupied in order to qualify for an exemption, then the exemption applies as follows:

(1) Property that is exclusively used or occupied for one (1) or more of the stated purposes is totally exempt under that section.

31. Evidence and testimony considered particularly relevant to this determination include the following:

- a. The Petitioner's basis for the request for the exemption is Ind. Code § 6-1.1-10-16, Ind. Code § 6-1.1-10-33, and Ind. Code § 6-1.1-10-36.3. *Board Ex. A and McNaghy testimony.*
- b. The subject properties are bare ground owned, occupied and used by the people of the State of Indiana for educational, scientific and other charitable purposes. *McNaghy and Heemstra testimony.*
- c. The Edna W. Spurgeon Woodland Nature Preserve containing 2 parcels (003-00941-00 and 003-01326-00) was acquired in 1961 and consists of 65 acres. The property was dedicated as a nature preserve in 1965. The Articles of Dedication were filed in June 1971. *Petitioner's Exhibit 1 & 2; McNaghy testimony.*
- d. The remaining nine parcels are known as the Art Hammer Wetlands Nature Preserve. The parcels were acquired at various times between 1989 and 1995. The Art Hammer Wetlands Nature Preserve was first dedicated in 1990 and a second time in 1999. The acreage on appeal for the Art Hammer Wetlands Nature Preserve is 295.746 acres. The original Articles of Dedication for the Art Hammer Wetlands Nature Preserve was filed June 25, 1991 and the Additional Articles of Dedication was filed June 20, 1997. *Petitioner's Exhibit 1, 2, 3 & 4; Board Exhibit C; McNaghy testimony.*
- e. The Art Hammer Wetlands Nature Preserve also includes a tenth parcel (003-00786-06) which is not the subject of any appeal. *McNaghy testimony*
- f. The Respondent testified that according to Ind. Code § 6-1.1-10-16 the Petitioner would only qualify for a total of fifteen (15) acres per township being tax-exempt. Therefore, the County determined the property 4% exempt and 96% taxable for the eleven parcels located in Elkhart Township. *Miller testimony.*

Analysis of Issue

32. The Petitioner is requesting a charitable exemption under Ind. Code § 6-1.1-10-16, Ind. Code § 6-1.1-10-33 and Ind. Code § 6-1.1-10-36.3.

Ind. Code § 6-1.1-10-16

33. Pursuant to Ind. Code § 6-1.1-10-16, buildings and land used for educational, literary, scientific, religious, or charitable purposes may be exempt from property taxation.
34. The statute is clear in the fact that a tract of land is exempt from property taxation if it is purchased for the purpose of erecting a building, which is to be owned, occupied, and used in such a manner that the building will be exempt. Also, not more than three (3) years after the property is purchased, and for each year after the three (3) year period, the owner demonstrates substantial progress towards the erection of the intended building and use of the tract for the exempt purpose. Ind. Code § 6-1.1-10-16(d)(3).
35. The Petitioner has demonstrated through testimony and evidence that the two nature preserves located in Elkhart Township are bare ground with no intentions of erecting any buildings.
36. The Respondent did not present any testimony or evidence to substantiate the 4%<sup>1</sup> exemption granted to the subject property pursuant to Ind. Code § 6-1.1-10-16.
37. The Petitioner and Respondent have failed to establish that the subject properties would qualify for exemption pursuant to Ind. Code § 6-1.1-10-16<sup>2</sup>.

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<sup>1</sup> Respondent's testimony suggests that this was arrived at based on the 15 acre limitation of Ind. Code § 6-1.1-10-16.

<sup>2</sup> Ind. Code § 6-1.1-10-16 was amended for the March 1, 2003 assessment date. The subject property may qualify for an exemption under a new section of Ind. Code § 6-1.1-10-16 for 2003 and future years.

Ind. Code § 6-1.1-10-33

38. Pursuant to Ind. Code § 6-1.1-10-33, tangible property under the control of a trustee is exempt from property taxation if it is used for the benefit of this state or a state institution.
39. The Petitioner testified that in Elkhart Township there are two nature preserves, the Edna W. Spurgeon Woodland Nature Preserve and the Art Hammer Wetlands Nature Preserve. The Edna W. Spurgeon Woodland Nature Preserve (2 parcels) was dedicated and accepted by the State of Indiana. *Petitioner's Exhibit 2*. The Art Hammer Wetlands Nature Preserve (11 parcels) was dedicated and accepted by the State of Indiana. *Petitioner's Exhibits 3 & 4*.
40. Both the Edna W. Spurgeon Woodland Nature Preserve and the Art Hammer Wetlands Nature Preserve were dedicated and accepted by the Department of Natural Resources pursuant to Ind. Code § 14-4-5. Nature preserves are declared to be held in trust for the benefit of the people of the state of Indiana of present and future generations. Ind. Code § 14-4-5-8.
41. The dedication of the Edna W. Spurgeon Woodland Nature Preserve and the Art Hammer Wetlands Nature Preserve clearly show that the land is used exclusively for the benefit of the state.
42. Therefore, the Petitioner qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-33 as follows:

Petition No.	Parcel No.	Acres	Exemption
57-003-02-2-8-10000	003-00013-00	35.203	100%
57-003-02-2-8-10001	003-00012-00	88.64	100%
57-003-02-2-8-10002	003-00018-00	0.75	100 %
57-003-02-2-8-10003	003-00270-00	10.67	100%
57-003-02-2-8-10004	003-00020-00	0.323	100%
57-003-02-2-8-10005	003-00423-00	101.835	100%
57-003-02-2-8-10006	003-00424-00	2.935	100%
57-003-02-2-8-10007	003-00941-00	21.94	100%

57-003-02-2-8-10008	003-00786-00	58.89	100%
57-003-02-2-8-10009	003-01328-00	48.89	100%
57-003-02-2-8-10010	003-01326-00	43.06	100%

Ind. Code § 6-1.1-10-36.3

43. This statute is only applicable to property that is determined to be exempt in a section of Ind. Code Chapter 6-1.1-10. The statute does not establish a basis for property tax exemption, instead it establishes a minimum standard requiring the property be predominantly used or occupied for the stated exempt purpose. Ind. Code § 6-1.1-10-36.3.
44. In this appeal, the Edna W. Spurgeon Woodland Nature Preserve and the Art Hammer Wetlands Nature Preserve qualify for exemption under Ind. Code § 6-1.1-10-33. The subject property is used and occupied 100% of the time for the benefit of the state. Therefore, the subject property meets the criteria set forth in Ind. Code § 6-1.1-10-36.3 and is given 100% exemption.

**Summary of Final Determination**

*Whether the real property owned by Acres, Inc. qualifies for 100% property tax exemption pursuant to Ind. Code § 6-1.1-10-16, § 6-1.1-10-33 and § 6-1.1-10-36.3 under the classification of educational, scientific or charitable purpose.*

Ind. Code § 6-1.1-10-16

45. The Petitioner does not qualify for property tax exemption pursuant to Ind. Code § 6-1.1-10-16.

Ind. Code § 6-1.1-10-33 and § 6-1.1-10-36.3

46. It is determined the Petitioner qualifies for property tax exemption as follows:

Petition No.	Parcel No.	Acres	Exemption
57-003-02-2-8-10000	003-00013-00	35.203	100%
57-003-02-2-8-10001	003-00012-00	88.64	100%
57-003-02-2-8-10002	003-00018-00	0.75	100 %
57-003-02-2-8-10003	003-00270-00	10.67	100%
57-003-02-2-8-10004	003-00020-00	0.323	100%
57-003-02-2-8-10005	003-00423-00	101.835	100%
57-003-02-2-8-10006	003-00424-00	2.935	100%
57-003-02-2-8-10007	003-00941-00	21.94	100%
57-003-02-2-8-10008	003-00786-00	58.89	100%
57-003-02-2-8-10009	003-01328-00	48.89	100%
57-003-02-2-8-10010	003-01326-00	43.06	100%

The above stated findings of fact and conclusions of law are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this \_\_\_\_ day of \_\_\_\_\_, 2003.

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Commissioner, Indiana Board of Tax Review

### **IMPORTANT NOTICE**

#### **- APPEAL RIGHTS-**

**You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.**